

THOMAS E. FRANKOVICH (State Bar No. 074414)  
 THOMAS E. FRANKOVICH,  
*A Professional Law Corporation*  
 2806 Van Ness Avenue  
 San Francisco, CA 94109  
 Telephone: 415/674-8600  
 Facsimile: 415/674-9900

Attorneys for Plaintiffs CRAIG YATES  
 and DISABILITY RIGHTS ENFORCEMENT,  
 EDUCATION SERVICES

RICHARD E. MORTON (State Bar No. 54188)  
 RICHARD E. MORTON  
 HAIGHT BROWN & BONESTEEL LLP  
 5 Hutton Centre Drive Suite 900  
 Santa Ana, CA 92707  
 Telephone: 714/754-1100  
 Facsimile: 714/754-0826

Attorneys for Defendants LEVIN COMMERCIAL  
 FACILITY; STUART M. LEVIN, trustee of the  
 STUART M. LEVIN REVOCABLE TRUST,

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

CRAIG YATES, an individual; and  
 DISABILITY RIGHTS ENFORCEMENT,  
 EDUCATION, SERVICES: HELPING  
 YOU HELP OTHERS, a California public  
 benefit corporation,  
 Plaintiffs,  
 v.  
 LEVIN COMMERCIAL FACILITY;  
 STUART M. LEVIN, trustee of the  
 STUART M. LEVIN REVOCABLE  
 TRUST,  
 Defendant.

**CASE NO. CV-07-6498-WHA**  
**JOINT CASE MANAGEMENT**  
**STATEMENT**

**Date:** June 12, 2008  
**Time:** 11:00 a.m.  
**Judge:** Honorable William  
 Alsup  
**Courtroom:** Courtroom 9, 19<sup>th</sup> Floor  
**Location:** 450 Golden Gate Ave  
 San Francisco, CA  
**Telephone:** 415/ 522-2020

The parties to the above-captioned action jointly submit this Case Management  
 Statement.

1 **1. JURISDICTION, VENUE & SERVICE**

2 **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C. §1331  
 3 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*  
 4 Pursuant to supplemental jurisdiction, attendant and related causes of action, arising from the  
 5 same nucleus of operative facts and arising out of the same transactions, are also brought under  
 6 parallel California law, whose goals are closely tied with the ADA, including but not limited to  
 7 violations of California Civil Code §51, *et seq.* and § 54, *et seq.*, California Health & Safety  
 8 Code §19955 *et seq.*, including §19959; and Title 24, California Building Standards Code.

9 **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is founded  
 10 on the facts that the real property which is the subject of this action is located in this district  
 11 at/near Novato, California, and that plaintiffs' causes of action arose in this district.

12 **Status of Service of Process:**

13 All parties to the action have been served.

14 **2. BRIEF DESCRIPTION OF CASE/FACTS**

15 This is an action brought by plaintiffs for discrimination based upon the defendants'  
 16 alleged failure to comply with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C.  
 17 §12101, *et seq.*, the Unruh Civil Rights Act, Cal. Civ. Code §§51 and 51.5, California Health  
 18 & Safety Code §19955, *et seq.*, and the California Disabled Persons Act, Cal. Civ. Code §§54,  
 19 54.1 and 54.3, all of which relate to the denial of access to a place of public accommodation.

20 Plaintiff CRAIG YATES is a person with a disability. Plaintiff visited LEVIN  
 21 COMMERCIAL FACILITY , Christopher's Café, a place of public accommodation, on  
 22 several occasions. While at Christopher's Café, plaintiff allegedly encountered several  
 23 architectural barriers to access, including a lack of directional signage to show accessible routes  
 24 of travel, i.e., entrances; lack of the requisite type and number of disabled parking stall(s); lack of

25 ///

26 ///

27 ///

28 ///

disabled van accessible parking stall(s); lack of an accessible entrances to Christopher's Café, Marin Carpet Service, Daniel Black Stone Financial Planning, Bonder Systems, Rachel Casrejohn, Attorney at Law and DiGiorigio Contracting; lack of accessible paths of travel (smooth hard packed surfaces) to: Christopher's Café, Marin Carpet Service, Daniel Black Stone Financial Planning, Bonder Systems, Rachel Casrejohn, Attorney at Law and DiGiorigio Contracting', lack of an accessible dining area; 5% compliance requirement; lack of a clear path of travel to the unisex restroom at Christopher's due to the placement of tables and chairs too close together, which prevents wheelchair access to the restroom; lack of a handicapped-accessible unisex public restroom at Christopher's; lack of an accessible entrance to the patio dining at Christopher's;

Plaintiffs allege that the existence of these architectural barriers constitutes violations of plaintiffs' civil rights under federal and state law, and caused plaintiff CRAIG YATES to suffer actual harm at the hands of defendants.

### **3. PRINCIPAL LEGAL ISSUES IN DISPUTE**

- a. whether architectural barriers existed and/or continue to exist at LEVIN COMMERCIAL FACILITY, Christopher's Café which denied access to persons with disabilities;
- b. whether the removal of architectural barriers is readily achievable;
- c. whether defendants made alterations and modifications to LEVIN COMMERCIAL FACILITY, Christopher's Café which trigger compliance with certain State and federal disability access standards; and
- d. whether and to what extent plaintiff CRAIG YATES suffered actual damages at the hands of defendants.

///

///

///

///

///

1 **4. MOTIONS**

2 If settlement efforts are unsuccessful, plaintiffs anticipate bringing a motion for  
3 summary judgment on this issue of defendants' liability.

4 **5. AMENDMENT OF PLEADINGS**

5 None anticipated at this time.

6 **6. EVIDENCE PRESERVATION**

7 No issues anticipated.

8 **7. DISCLOSURES**

9 The parties have served their initial disclosures of evidence pursuant to Fed. R. Civ. P.  
10 26. These disclosures included identification of known percipient witnesses, and production of  
11 receipts from the subject public accommodation, pre-filing correspondence from plaintiff  
12 CRAIG YATES to the owner of LEVIN COMMERCIAL FACILITY and operator of  
13 Christopher's Café , and photographs of the Café taken by plaintiff.

14 **8. DISCOVERY**

15 The parties request that the permissible number of interrogatories be increased to fifty  
16 (50) per party. Discovery shall otherwise be conducted pursuant to the limitations set-forth in  
17 the Federal Rules of Civil Procedure.

18 **9. CLASS ACTION**

19 Not Applicable.

20 **10. RELATED CASES**

21 None.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

**11. RELIEF**

Plaintiffs seek injunctive relief to compel defendant to make its public accommodation accessible pursuant to ADAAG or Title 24, whichever is more restrictive, and to further maintain access in the future. Plaintiffs also seek actual and statutory damages and attorneys' fees, including litigation expenses and costs.

**12. SETTLEMENT/ADR**

The ADR process to which the parties jointly request referral is court-sponsored mediation.

**13. MAGISTRATE JUDGE TRIALS**

Plaintiffs would consent to reassignment to a Magistrate Judge for trial purposes.

**14. OTHER REFERENCES**

Not applicable.

**15. NARROWING OF ISSUES**

Plaintiffs believe that the issue of defendants' liability can be decided on motion to the Court.

**16. EXPEDITED SCHEDULE**

Not applicable.

**17. SCHEDULING**

Disclosure of Expert Witness: October 22, 2008

Discovery Cut-off: February 2, 2009

Last Day to Hear Motions: February 26, 2009

Final Pretrial Conference: May 11, 2009

Trial Date: June 22, 2009

///

///

///

///

///

1 **18. TRIAL**

2 **Anticipated length of trial:** 4 -5 days

3 **Type of trial:** X jury court

4 **19. NON-PARTY INTERESTED PERSONS**

5 The parties are unaware of any non-party interested persons or entities.

6 **20. OTHER MATTERS**

7 None.

8 Dated: June 3, 2008 THOMAS E. FRANKOVICH  
9 *A PROFESSIONAL LAW CORPORATION*

10 By: /s/  
11 Thomas E. Frankovich  
12 Attorneys for Plaintiffs CRAIG YATES and  
13 DISABILITY RIGHTS ENFORCEMENT,  
14 EDUCATION SERVICES

15 Dated: June 3 , 2008 RICHARD E. MORTON  
16 HAIGHT BROWN & BONESTEEL LLP  
17 5 Hutton Centre Drive Suite 900  
18 Santa Ana, CA 92707

19 By: /s/  
20 Richard E. Morton  
21 Attorneys for Defendants LEVIN COMMERCIAL  
22 FACILITY; STUART M. LEVIN, trustee of the  
23 STUART M. LEVIN REVOCABLE TRUST,  
24  
25  
26  
27  
28